

DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

June 23, 1998

United States of America,)	
Complainant,)	
)	
v.)	8 U.S.C. §1324a Proceeding
)	OCAHO Case No. 98A00028
)	
Foz-Leiria, Inc., T/A Portuguese)	
Fisherman Restaurant,)	
Respondent.)	
_____)	

DECISION

Appearances: Leo P. Weber, Esquire
 Immigration and Naturalization Service for complainant

Dominic Kong, Esquire
Law Office of Martin C. Liu for respondent

Before: Administrative Law Judge Joseph E. McGuire

On December 22, 1997, complainant, acting by and through the Immigration and Naturalization Service (INS), commenced this action, which arises under the Immigration Reform and Control Act of 1986 (IRCA), as amended, 8 U.S.C. § 1324a, by having filed a four-count Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO).

That initiating pleading contained 11 alleged IRCA violations, for which civil money penalties totaling \$6,345 were assessed.

Count I of the Complaint alleged that subsequent to November 6, 1986, Foz-Leiria, Inc. had violated the provisions of 8 U.S.C. § 1324a(a)(1)(A) by having illegally hired for employment in the United States, Felipe Alberto da Silva Graca and Joao Silvestre Martins, whom respondent allegedly knew were not authorized for employment in the United States. Complainant assessed a civil money penalty of \$2,250, or \$1,125 for each of those two (2) alleged violations.

Count II of the Complaint alleged that respondent violated the provisions of 8 U.S.C. § 1324a(a)(1)(B) by having failed to prepare, retain, or make available for inspection the

employment eligibility verification Form I-9 for one Joao Silvestre Martins. For that alleged paperwork infraction, complainant levied a \$595 civil money penalty assessment.

In Count III of the Complaint, it was alleged that respondent had also violated the provisions of 8 U.S.C. § 1324a(a)(1)(B) by having failed to ensure that Americo Afonso-Cabenco, Felipe Alberto da Silva Graca, Pedro Fernandes, and Antonio J. Forneiro properly completed Section 1 of their pertinent Forms I-9 and that respondent had also failed to complete Section 2 of those four (4) Forms I-9. For these alleged paperwork infractions, complainant levied civil money penalties totaling \$1,840 or \$550 for each of the two (2) infractions concerning Messrs. Afonso-Cabenco and Da Silva Graca, and \$370 for each of the two (2) remaining allegations.

Count IV of the Complaint alleged that respondent had again violated the provisions of 8 U.S.C. § 1324a(a)(1)(B) by having failed to complete Section 2 of the pertinent Forms I-9 for Juan DeJesus Ramires-Tasama (a/k/a Jesus Ramirez), Manuel B. Alves, Joao Costa (a/k/a Joao Augusto M. Costa), and Carlos Manuel Santos (a/k/a Carlos Manuel Fernandes Santos). For these four (4) paperwork infractions, complainant levied civil money penalty assessments totalling \$1,660, or \$550 for that violation involving Ramires-Tasama, Juan De Jesus, a/k/a Ramirez, Jesus and \$370 for each of the remaining three (3) charges.

On May 21, 1998, the parties jointly filed a Motion to Approve Consent Findings, a fully executed five (5)-page document captioned Agreement Containing Consent Findings which resolves all issues in the Complaint, and a proposed Decision and Order.

Under the pertinent rule of the OCAHO Rules of Practice and Procedure, 28 C.F.R. §§ 68.14(a)(1), (b) and (c), where the parties have submitted a settlement agreement containing consent findings and a proposed decision and order, the Administrative Law Judge may, if satisfied with its timeliness, form, and substance, accept such agreement by issuing a decision and order based upon the agreed findings.

It is found that the terms of the Consent Findings comply with the applicable regulations and are appropriate in timeliness, form, and substance pursuant to 28 C.F.R. §§ 68.14(b) and (c). It is further found, under the terms of the Consent Findings and pursuant to the provisions of 28 C.F.R. §§ 68.14(b) and (c), that:

1. Respondent has withdrawn its request for a hearing on the merits;
2. Respondent admits the 11 allegations contained in Counts I through IV of the Complaint and agrees to pay civil money penalties in the total amount of \$5,076 in the manner set forth in the Consent Findings;

3. Respondent agrees to cease and desist from any further violations of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1324a(a)(1)(A) and 1324a(a)(2);
4. The parties have waived any further procedural steps before the Administrative Law Judge;
5. Each party shall bear its own costs and attorney's fees and any other expenses incurred by such party in this action;
6. The parties have waived any right to challenge or contest the validity of this Decision;
7. The entire record on which this Decision is based consists solely of the Complaint, the Notice of Hearing, and the Consent Findings, herein incorporated by reference;
8. This Decision shall have the same force and effect as if this ruling had been issued following a full administrative hearing.

In view of the foregoing, the parties' Joint Motion to Approve Consent Findings is hereby granted.

Joseph E. McGuire
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of June, 1998, I have served copies of the foregoing Final Decision to the following persons at the addresses shown, in the manner indicated:

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